

Exhibit 5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Friday, May 1, 2009

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Oral deposition of PETER VAN
N. LOCKWOOD, ESQUIRE, taken pursuant to
notice, was held at the offices of CAPLIN
& DRYSDALE, One Thomas Circle N.W., Suite
1100, Washington, DC 20005, commencing
at 9:43 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

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MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

1 **Asbestos PI Trust?**

2 A. PI Trust.

3 **Q. Fair enough.**

4 A. When the Trust is assigned
5 rights under the policies and the Debtors
6 are given the right to assert any and all
7 coverage defenses --

8 MR. FINCH: You mean
9 insurers?

10 THE WITNESS: I am sorry.
11 Let me start over again.

12 When the Trust is assigned
13 rights under the policies and the
14 insurers are retaining all of
15 their coverage defenses with the
16 two exceptions we discussed
17 earlier, if the Trust proposes to
18 demand in some way or another
19 coverage from one or more insurers
20 under those policies, then
21 whatever the insurer asserts as a
22 pre-condition to coverage, what
23 you would call an obligation or a
24 right, would have to be fulfilled

1 to the extent that a coverage
2 court determines that there is a
3 pre-condition to coverage.

4 And since the Trust is the
5 one seeking the coverage, by
6 hypothesis, it's the only one that
7 has any incentive to make sure
8 that the rights or -- excuse me --
9 that the obligations, the
10 pre-conditions are satisfied as
11 required by a coverage court.

12 And so to that extent, yes,
13 the Trust, one way or another, to
14 the extent determined by a
15 coverage court or by negotiations
16 with insurers, will have to
17 perform what you have described as
18 the obligations and rights under
19 the assigned insurance coverage.
20 That's my understanding.

21 BY MR. BROWN:

22 Q. Do the Debtors, the
23 Reorganized Debtors, retain any duties or
24 obligations under the asbestos insurance

1 MR. FINCH: Objection,
2 foundation.

3 THE WITNESS: Only in the
4 sort of vaguest and most general
5 terms. Well, I am sure it's more
6 than 10,000. Again, it could be
7 20,000; it could be 30,000. I
8 just don't know.

9 Those firms -- with the
10 exception of Mr. Cooney's firm,
11 those firms represent a lot of
12 people. And in the case of
13 Mr. Rice, he has co-counsel
14 relationships, his firm does, with
15 a lot of other firms. So it gets
16 into the question of, quote, what
17 do you mean by representation,
18 sole representation, joint
19 representation. But, suffice it
20 to say, they represent a lot of
21 claimants.

22 BY MR. BROWN:

23 Q. Okay. And in their capacity
24 as counsel for those claimants, they have

1 discovery and litigation of
2 confirmation objections. But
3 those are not -- I would not
4 regard those as any types of
5 agreements you are questioning
6 about.

7 BY MR. DANIEL COHN:

8 Q. All right. Directing your
9 attention now to ACC Exhibit-11, which is
10 the TDP.

11 A. I have it.

12 Q. All right. Who drafted the
13 TDP?

14 MR. FINCH: Objection. This
15 gets into Plan negotiations and
16 drafting. I will let you answer
17 that question, but we will see how
18 it goes from there.

19 THE WITNESS: To some
20 extent, Mr. Inselbuch may know
21 more about this than I do. But I
22 have a pretty good knowledge of
23 it.

24 As I have previously

1 mentioned in this deposition, this
2 TDP in its inception was a sort of
3 mark-up job on one of the previous
4 TDPs from one of the previous
5 bankruptcies that that had been
6 confirmed. I don't recall, as I
7 sit here today, which one it was,
8 but it would have been one of the
9 more recent ones.

10 It then, of course, had to
11 be modified to reflect the
12 particularities of Grace and the
13 claims against Grace and what have
14 you. And you have heard some
15 testimony about things like
16 Sections 5.12 and 5.13. The
17 participants that did it were
18 basically counsel for the ACC,
19 counsel for the FCR, and members
20 of the ACC itself in terms of
21 reviewing and commenting on
22 things, and the FCR himself.

23 The actual, physical
24 drafting as opposed to the

1 commenting and what have you was,
2 I believe, done by Caplin &
3 Drysdale.

4 BY MR. DANIEL COHN:

5 **Q. What input, if any, did**
6 **Grace have concerning the TDP?**

7 MS. HARDING: Objection with
8 respect to negotiations.

9 THE WITNESS: Well, it was a
10 general proposition. Grace was
11 furnished copies of drafts and
12 afforded the opportunity to
13 comment on them.

14 BY MR. DANIEL COHN:

15 **Q. And were any changes made to**
16 **what sounds like an ACC FCR draft at the**
17 **behest of Grace?**

18 MS. HARDING: Same
19 objection.

20 THE WITNESS: I don't really
21 recall.

22 BY MR. DANIEL COHN:

23 **Q. Directing your attention to**
24 **Section 2.1 of the TDP.**

1 having to do with how the Asbestos
2 Permanent Channelling Injunction
3 works.

4 The provisions in the
5 Asbestos Permanent Channelling
6 Injunction are very complex. As a
7 general proposition, however, I
8 would say that the claims that are
9 being channelled to the Asbestos
10 Personal Injury Trust are claims
11 that are against the Debtors or
12 against various other entities
13 defined as asbestos-protected
14 parties that arise in the manner
15 that satisfies the requirements of
16 Section 524(g), which has very
17 specific language about what can
18 and cannot be channelled to an
19 Asbestos Personal Injury Trust
20 under that section.

21 What you are, in effect,
22 trying to ask is does the phrase
23 you have used fit within or
24 without the terminology of Section

1 fine, if it's two minutes.

2 MR. FINCH: It's two

3 minutes. Off the record.

4 (There was a break from 3:17

5 p.m. to 3:20.)

6 BY MR. SPEIGHTS:

7 Q. Mr. Lockwood, has trustees

8 been selected for the PI Trust?

9 A. Yes.

10 Q. Have they been revealed?

11 A. Their names are set forth at

12 the end of the PI Trust Agreement. The

13 second-to-last page is a signature page

14 which names three individuals, Harry

15 Huge, Lewis Sifford, and Dean Trafelet,

16 as the three prospective trustees.

17 Q. Did the ACC choose these

18 three people?

19 A. The ACC and the FCR

20 consulted each other on these three

21 prospective individuals and then proposed

22 them to the co-proponents and the

23 co-proponents accepted them.

24 Q. Had the ACC or the FCR

1 would be.

2 And is it correct that the
3 ACC does not have a position on what type
4 of claim it would be if it's not a Class
5 6 claim?

6 A. Well, the ACC doesn't, as
7 such, have positions on hypothetical
8 questions. So, yes, the ACC doesn't have
9 a position on that issue. The ACC --
10 well, I will leave it at that.

11 Q. On Friday, Mr. Cohn asked
12 you a question, who drafted the TDP.
13 That was the question, and you gave an
14 answer which I am happy to show you the
15 full answer. But I WANT to repeat a
16 portion of your answer. You said: "The
17 participants that did it were basically
18 counsel for the ACC, counsel for the FCR,
19 and members of the ACC itself in terms of
20 reviewing and commenting on things, and
21 the FCR himself."

22 When you said the ACC
23 itself, what did you mean?

24 A. I meant --

1 Q. I am sorry. When you said
2 members of the ACC itself, what members
3 are you talking about?

4 A. Well, I was referring to the
5 personal injury counsel who were the
6 delegated representatives of the
7 individual ACC members, if that's what
8 you are driving at.

9 Q. That's what I am driving at.
10 And who specifically were
11 they?

12 A. As far as I know -- well,
13 the way in which the process works, in
14 general, is sometimes the ACC has
15 in-person meetings, sometimes it has
16 telephonic meetings, sometimes documents
17 get sent to it by email as PDF
18 attachments or whatever, and the ACC has
19 asked do you want to have a meeting or is
20 this good enough for you. So there is a
21 variety of ways in which the ACC views an
22 input as obtained.

23 And my answer was simply
24 that at the conclusion of a process, the

1 members of the ACC had weighed in in one
2 or more of the ways in which I had
3 described some of them had; they all had
4 the opportunity to express their views;
5 and, therefore, the final product was the
6 product of their input. And there was a
7 final vote to go forward with the
8 document.

9 Q. Okay. And when you say the
10 members, you are talking about their
11 actual personal injury counsel?

12 A. As far as I know. But,
13 again, I couldn't tell you whether an
14 individual personal injury lawyer might
15 have consulted with his client, the
16 member, on one or more aspects of the TDP
17 or, for that matter, even sent the client
18 a copy of the entire TDP and had a
19 discussion with him about it. I
20 certainly couldn't exclude that.

21 Q. Can you tell me the list of
22 counsel that you are talking about, the
23 actual names?

24 A. They would be -- as a

1 general proposition, I believe they are
2 in the Disclosure Statement. If they
3 are, it's a hell of a lot better
4 description of them than my memory. I
5 just --

6 MR. FINCH: There is also an
7 order entered by the U.S. Trustee
8 that identifies the 11 individual
9 members of the ACC and their
10 counsel, care of their firms.

11 BY MR. BROWN:

12 Q. That's what I am driving at.
13 I would like to know who the individuals
14 were at their firms that were involved.

15 A. Well, let me just see. I am
16 somewhat surprised. The Disclosure
17 Statement does not appear to contain the
18 members of the ACC. It just lists the
19 counsel representing the committee as a
20 whole. I had misremembered. I had
21 thought that it did.

22 I can't really remember. I
23 mean, I know the four -- I identified
24 four earlier as being involved in the

1 discussions with Grace. They are
2 included. I think there is at least nine
3 members of the ACC. I do not recall, as
4 I sit here, who the other five members of
5 the ACC are. I mean, they are of
6 record -- strike that. I do not recall
7 who the other five lawyers for the
8 members of the ACC are. They are of
9 record.

10 Q. But the four to which you
11 are referring is Mr. Budd, Mr. Rice,
12 Mr. Cooney, and Mr. Weitz?

13 A. Correct.

14 Q. You were talking about the
15 Trust Distribution Procedures and who
16 drafted them.

17 Would your answer be the
18 same with respect to the Trust Agreement?

19 A. On the Trust Agreement, I
20 think there was more input from Grace,
21 and, indeed, I think there may have been
22 some from counsel from Sealed Air, as I
23 think about it. And, indeed, now that I
24 think about it, I think there may have

1 even been a little input from the Sealed
2 Air counsel on the TDP. But, again, the
3 primary draftspersons were counsel for
4 the ACC and the FCR.

5 Q. Okay. Can I direct your
6 attention to the Plan, which I guess is
7 ACC-5, and specifically it's page 70 on
8 my copy. It's under Section 7.7
9 Conditions to Occurrence of the
10 Confirmation Date, specifically condition
11 (j).

12 A. I see it.

13 Q. Can you just take a moment
14 to read that? I have one question on
15 that.

16 A. I have read it.

17 Q. In the portion of that
18 condition dealing with asbestos PD
19 claims, second-to-the last line, you will
20 see the words "if any" appear there, but
21 the same language doesn't appear for
22 asbestos PI claims.

23 Why?

24 MR. FINCH: Objection,